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Supreme Court of the United States
OCTOBER TERM, 1944.

No. 118

E. L. O'NEAL, ADMINISTRATOR,
Petitioner,
versus
UNION PRODUCING COMPANY,
Respondent.

RESPONDENT'S BRIEF.

ALLAN SHOLARS,
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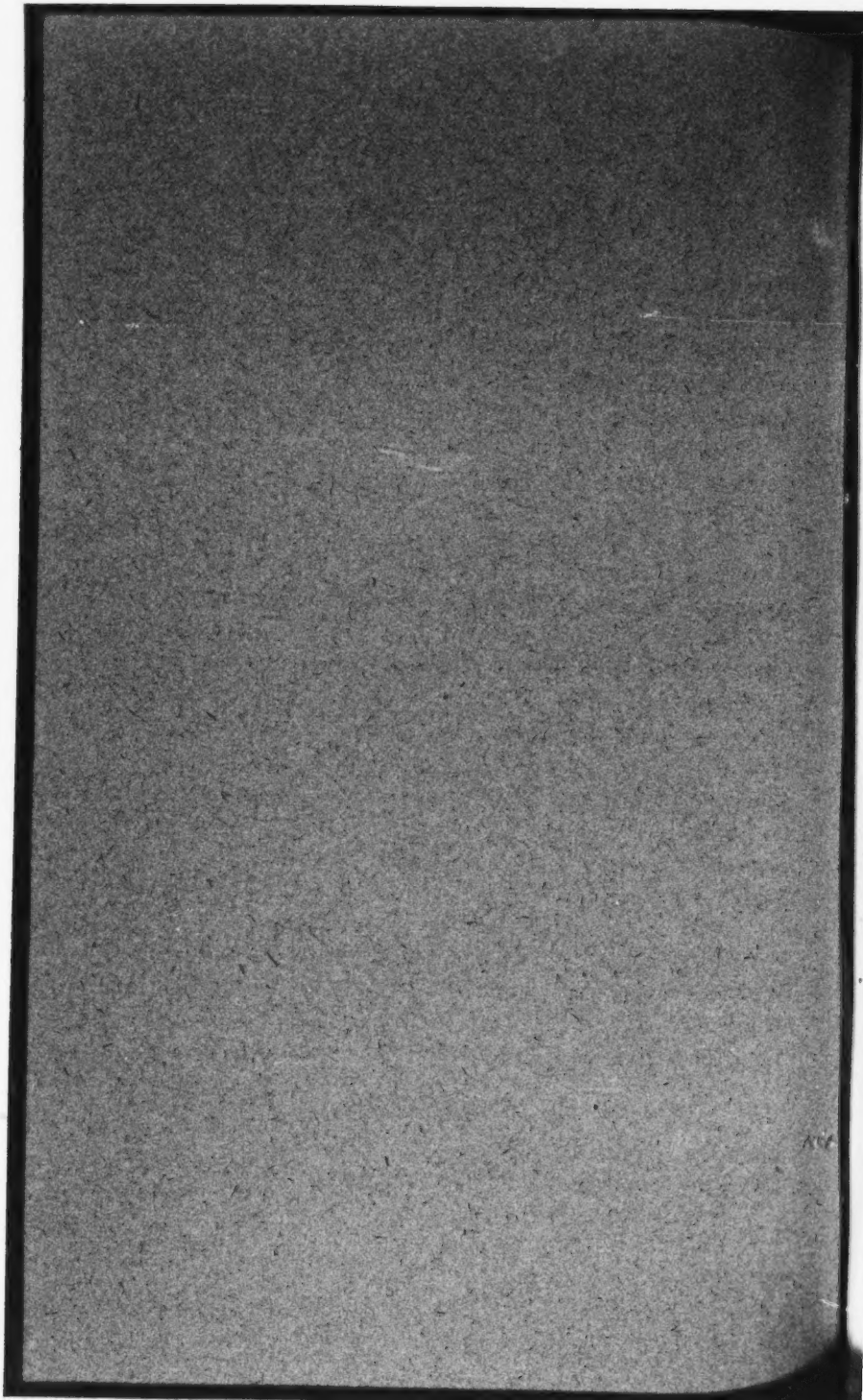
HAUSER PRINTING CO., INC., NEW ORLEANS



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May It Please the Court:

The decision of the Circuit Court of Appeals sought to be reviewed does not conflict with the state rule of law, but is in full accord therewith. The Louisiana cases cited by petitioner are not decisive of and do not control the point at issue.

PERTINENT LOUISIANA STATUTES AND DECISIONS

The gas royalty clauses in the mineral lease here at issue are not such as are generally found in Louisiana contracts, but are, in their wording, unusual, if not even *sui generis*. They are, though, clear and explicit and

free from doubt and ambiguity. They constitute the law between the parties and may not be extended beyond their plainly expressed intentions. *La. Civ. Code*, Art. 1945. *Sartor vs. United Carbon Co.*, 183 La. 287, 163 So. 103, 104.

As gas only was found and produced from the leased premises, paragraph 1st of the royalty clauses relating to payment of a royalty in kind on oil is not relevant to this controversy. Paragraph 2nd provides, where gas only is found, for payment to lessor "1/8 part of net proceeds at prevailing market price at well for the gas", and par. 3rd, "to pay lessor for gas" * * * "1/8 part of net proceeds at prevailing market price at well". (R. 8.) That is to say, the royalties are to be calculated upon the gas, irrespective of its use off the premises, whether for manufacture of casinghead gas, gasoline or otherwise, as such gas is produced from and at the well, not upon its constituent elements or products manufactured from it at a distance from the well. And by statutory definition, "gas means natural gas as it is taken from the earth, including any gasoline content it may have". La. Acts 1924, No. 252, sec. 13, p. 605 (Dart's Stat. 4783).

With respect to leases stipulating for royalties on gas at market price or value, without specification as to point or place of determination of such price or value, the established rule in Louisiana is that the price or actual value at the wellhead, "where it is reduced to possession and ownership, where title vests", will govern. *Sartor v. United Gas Public Service Co.*, 186 La. 555, 173 So. 103, 107. *Sartor v. Arkansas Nat. Gas Corp.*, 321 U. S. 620, 622. But here the contracting parties did not leave the matter open to question or subject

to construction in providing for "prevailing market price at well for the gas". And, necessarily, it was contemplated that such wellside price covered the gas and all of its constituent elements, including gasoline which was not removed at the well, but in a plant some distance away.

It is, also, at the well that its owner and operator is required to meter and measure the gas produced. La. Acts 1924, No. 252, sec. 2, pars. 24, 25, 26, p. 598 (Dart's Stat. 4772). It is upon the gas so metered and measured at the well that royalties are due to the lessor under the contract of lease. And it was upon the amount of gas so metered and measured at the well that petitioner herein based the demand of his complaint, pars. 3, 13 (R. 3, 6), for additional royalties on gas. His demand for royalties on the gasoline manufactured from a portion of that same gas (R. 63) constitutes a demand for double royalties on that portion. *Union Producing Co. v. Pardue*, (C. C. A. 5th) 117 F. (2d) 225, 229.

PETITIONER'S CASES DISTINGUISHED

In *Wemple v. Producers' Oil Co.*, 145 La. 1031, 83 So. 232, the first of the cases cited by petitioner, it was held that gasoline produced from casinghead gas at the mouth of an oil well, under a lease which made no provision for royalties on casinghead gas, was a part of the oil produced as comprehended in the oil royalty clause of the contract. Gasoline extracted from gas flowing from a well producing gas only has been held, however, not to be oil. *Wilkins v. Nelson*, 155 La. 807, 815, 99 So. 607. The quotation from *Coyle v. Louisiana Gas & Fuel Co.*, 175 La. 990, 144 So. 737, appearing at page 12 of petitioner's brief, taken from the decision therein on orig-

inal hearing, is hardly appropriate to the decision there rendered on rehearing. The lease contract there required lessee "to pay the lessor one-eighth (1/8) royalty for the gas from each well where gas only is found". It was conceded that this contemplated a delivery of the gas in kind. Lessee sold the gas produced by it to another in its entirety with all of its gasoline content, for a price per thousand cubic feet, plus one-third of the value of gasoline extracted (144 So. 743). Lessor was held to be entitled to one-eighth of the price so received. The gas there in question was produced in an entirely different field from that in the case at bar. It "is so heavily saturated with gasoline that it is unfit for commercial uses. The gas produced by these wells, which are commonly known as gasoline wells, carries approximately one and one-half to two gallons of gasoline per one thousand cubic feet". (P. 739).

In *Crichton v. Standard Oil Co.*, 178 La. 57, 150 So. 668, the lease provided, "if any well on said premises produces gas only, the Oil Company agrees to pay to Grantor 1/8 of market value, for the product of each well", etc. The gas, it was there said (p. 669) "was worthless until rendered valuable by the process of extracting the gasoline from it", * * * "Under the circumstances, the defendant sold the wet gas to the Palmer Corporation, receiving, as the price therefor, one-third of the market value of the gas and gasoline rendered marketable by the extraction process". It was held that this sale price of the "product" of the well was the proper basis for the lessor's royalty. And in *Wall v. United Gas Public Service Co.*, 178 La. 908, 152 So. 561, wherein the lease provided that "the grantor shall be paid one-eighth of the value of such gas", etc., it was held that the lessee's tender and payment to lessor of royalties based

upon the recognized price or value of gas in the field and the gasoline extracted therefrom, less the cost of its extraction, fully complied with its contractual obligation.

The *Wemple* case relating to oil royalties clearly has no pertinency here. In the *Coyle* and *Wall* cases the lessor-plaintiffs demanded one-eighth of all gasoline extracted, or its value, without deduction for costs of extraction, and in the latter, the demand primarily was for all, eight-eighths, of the gasoline. In the Crichton case the plaintiff contended that the sale price of the gas was not its market value and seemingly, likewise, complained of deduction of gasoline extraction costs. In each case the lessee-defendant appears to have conceded that, under the particular terms of the lease contracts involved and the peculiar situation obtaining in the gas fields in question, his lessor was entitled to royalties on the price or value of both gas and gasoline sold either confusedly or separately and each had made payment or tender on such basis. In none of those cases was the issue raised or passed on as to the obligation of a lessee to pay royalties on extracted gasoline in addition to royalties on all the gas produced under a lease provision such as the one here in question.

PETITIONER'S CONTENTION CONSIDERED AND REJECTED

The identical issue here was presented and decided adversely to the position of petitioner in *Arkansas Natural Gas Corp. v. Sartor*, (CCA 5th) 98 F. (2d) 527, 529, and in *Union Producing Co. v. Pardue*, (CCA 5th) 117 F. (2d) 225, 228, 229. In the latter the *Coyle* and *Wall* decisions are discussed at length and shown to be inappropriate to the contention urged by the party lessor

there and petitioner here. Counsel for petitioner was attorney for the lessor litigants in both of those cases. Both of them were cited and referred to as supporting the decision herein sought to be reviewed. (R. 53.) 153 F. (2d) 158. The *Wemple* decision was referred to by petitioner for the first time in his petition for *certiorari*. The *Crichton* case was cited in his brief below without discussion.

CONCLUSION

Petitioner's contention and the Louisiana decisions cited in support of it were not ignored or summarily rejected, it is submitted, but were considered and found inappropriate. Although summary judgment was rendered herein, no controverted matters of fact were involved (R. 41, 42); only a question of law was presented in the motion to dismiss (R. 13) and motion for summary judgment (R. 36) of defendant (respondent here) and passed upon by the Court (R. 27. 57 F. Supp. 441). And that question was correctly decided, it is submitted, pursuant to applicable statutes and decisions of Louisiana. The application for *certiorari* herein should, therefore, be denied.

Respectfully submitted,

ALLAN SHOLARS,
GEO. GUNBY,
Attorneys for Respondent,
Union Producing Company.

APPENDIX

Louisiana Civil Code

Article 1945. Legal agreements having the effects of law upon the parties, none but the parties can abrogate or modify them. Upon this principle are established the following rules:

First.—That no general or special legislative act can be so construed as to avoid or modify a legal contract previously made;

Second.—That courts are bound to give legal effect to all such contracts according to the true intent of all the parties;

Third.—That the intent is to be determined by the words of the contract, when these are clear and explicit and lead to no absurd consequences;

Fourth.—That it is the common intent of the parties—that is, the intention of all—that is to be sought for; if there was a difference in this intent, there was no common consent and, consequently, no contract.

Louisiana Acts 1924, No. 252

Section 2. The following rules and regulations shall be observed in drilling for, producing, taking, transporting, piping, and using gas in this state.

* * * * *

24. No gas shall be taken from any gas well without being metered. The meter shall be at or near the well, and no by-pass shall be on the gas line at such a place that the gas can be passed around the meter.

25. No meter or measuring apparatus shall be of a size or capacity other than that reported by the producer to the Conservation

Department. There shall not be any wilful or intentional leakage of gas in or near the meter, or measuring apparatus, or any other condition knowingly existing in the meter, or measuring apparatus, or in the gas line that causes the meter or measuring apparatus to register any other amount of gas than the true amount that is being drawn from the well.

26. Each well shall be equipped with a meter, properly housed, and locked, and the Department of Conservation shall have access to all well meters, at all times, and shall be furnished with a duplicate key to meter houses, shall make such reasonable tests as it may see fit, and shall be furnished, at the end of each week, with all original meter records, and the Department of Conservation shall, within fifteen (15) days return such records to the operator or producer, or photostatic copies thereof. However, no adjustments of the meters or wells shall be made by the Department of Conservation without due notice to the operator.

* * * * *

Section 13. The following definitions and constructions are made a part of and shall be used in construing the meaning and purposes of this Act. * * * "gas" means natural gas as it is taken from the earth, including any gasoline content it may have, but it does not include casing-head case; * * *